UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-8673-RGK (SP)	Date	January 22, 2016
Title	Wendy Chowning, et al. v. Kohl's Department Stores, Inc., et al.		

Present: The Honorable Sheri Pym, United States Magistrate Judge

Kimberly Carter	None	None
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
None Present	None Present

Proceedings: **(In Chambers) Order Granting in Part and Denying in Part Plaintiff's Motion to Compel [42]**

I.
INTRODUCTION

On January 15, 2016, the parties filed a Joint Stipulation for plaintiff's Motion to Compel Production of Documents. Docket no. 42 ("JS"). After meeting and conferring, the parties resolved several disputed issues and defendants began producing documents on a rolling basis with the understanding that production would be completed by February 2, 2016. On January 20, 2016, plaintiff filed a supplemental memorandum ("P. Supp.") confirming the two remaining issues in dispute: (1) the deadline for completing document production; and (2) whether plaintiff's request for production no. 2 is limited in scope to California. Defendants also filed supplemental papers on January 20, 2016 addressing these two issues ("D. Supp.").

After reviewing the parties' papers the court has determined a hearing on this matter would not be of material assistance and so VACATES the hearing that was set for January 26, 2016. For the reasons that follow, the court grants in part and denies in part the motion to compel.

II.
BACKGROUND

This is a class action originally filed in the Southern District of California, which was transferred to this court upon motion by the defendants. JS at 2. Under the local rules, plaintiff is required to file its motion for class certification within 90 days of the date of transfer, which is on or before February 2, 2016. *Id.*; *see* Local Rule 23-3. Plaintiff seeks to represent all persons who, while in the state of California, between July 21, 2011 and the present, purchased from Kohl's one or more private or exclusive branded items advertised at a discount of 30% or more from a stated "original" price, and who have not received a refund or credit for their purchase(s). JS at 2. Plaintiff alleges Kohl's price comparison advertising constitutes unfair competition and false adverting in violation of several California laws. *Id.*

III.
DISCUSSION

Request for Production No. 2:

The only document request still in dispute is request no. 2, which calls for:

> All Documents Concerning any research, study, analysis, report or survey Concerning retail prices, discounts, sale prices or price comparison advertising. This should include any such Documents in Kohl's possession, custody or control, regardless of whether or not they were drafted, created, prepared or produced for Kohl's.

Rule 26(b) permits "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). To be relevant, the information sought "need not be admissible in evidence"; however, it must "proportional to the needs of the case." *Id.* In determining the needs of the case, the court "consider[s] the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.* Moreover, Rule 26(b) sets limitations on the scope of discovery. These include the requirement that the court must limit "proposed discovery [that] is outside the scope permitted." Fed. R. Civ. P. 26(b)(2)(C)(iii).

Plaintiff argues this request is highly relevant to central issues in this case, including the common questions of "whether defendant's advertisements were likely to deceive a reasonable consumer; [and] whether defendant's statements regarding its pricing were material to plaintiff's purchasing decision." P. Supp. at 4-5 (quoting *Spann* *v. JCPenny Corp.*, 307 F.R.D. 508 (C.D. Cal. 2015)). Defendants argue plaintiff does not seek to represent all consumers nationally, but only California consumers who made purchases of specific items between July 21, 2011 and the present. JS at 10-11, 12-13. Therefore the request, as propounded, is overbroad and unduly burdensome with respect to products, stores, and period.

The court agrees with plaintiff that the information sought for regions beyond California is discoverable. While it may be true that consumers in Maine are different from consumers in California, this does not necessarily mean they are any more or less likely to be affected by things like sale price advertising. Whether or not studies or surveys concerning non-California consumers ultimately have persuasive value, they are at least relevant to plaintiff's claims.

The court does, however, find the request overbroad as to time. Kohl's was established in 1962. Consumer tastes, sophistication, and expectations, as well as advertising and pricing practices, and the laws governing such, have changed over the course of fifty-plus years. The court therefore **ORDERS** defendants to produce all responsive documents, inclusive of the whole of the United States, but for the period beginning with creation, sale, or marketing of Kohl's private or exclusive branded items to the present.

Production Deadline

Defendants have been producing documents on a rolling basis, and have committed to completing their production no later than February 2, 2016. Plaintiff argues this is not soon enough, as she will need to file a motion for class certification and a summary judgment opposition on or before February 2. In particular, defendants intend to file a motion for summary judgment by January 25, 2016, before plaintiff's February 2, 2016 deadline to move for class certification. P. Supp., Ex. 1. Plaintiff would likely need to oppose the summary judgment motion by February 1, 2016. *See id.* Plaintiff argues that in light of defendants' documented intention, it is not reasonable for the document production deadline to remain February 2, 2016. P. Supp. at 1-5. Plaintiff seeks "prompt" production of documents from defendants.

Plaintiff acknowledges defendants have produced documents on three occasions, but due to the deposition schedule plaintiff has been unable to review two of those productions. P. Supp. at 3 & n.2, 4; D. Supp. at 2 (asserting defendants have made five such productions of documents containing over 1,000 responsive pages). Thus, plaintiff cannot, with any certainty, state what has been produced or what remains to be produced. P. Supp. at 3-4 & n.3. The court appreciates that plaintiff has been granted only a short window to conduct class certification discovery, and her concern that she may not obtain the discovery with sufficient time to use it to oppose defendants' motion for summary judgment and prepare her class certification motion is valid. But plaintiff has failed to produce any support for her contention that defendants' rolling discovery production has been slow or defective.

Nonetheless, in light of the class certification motion deadline and defendants' insistence on filing their motion for summary judgment ahead of plaintiff's class certification motion, it is reasonable to require defendants to ensure production is complete so as not to prejudice plaintiff. *See Identiseal Corp. of Wisconsin v. Positive Identification Sys., Inc.*, 560 F.2d 298, 301 (7th Cir. 1977) (the "rules provide for judicial intervention to settle disputes about the scope of discovery and to enforce a legitimate request by one party for information or documents from the other party"); *In re Multi-Piece Rim Products Liab. Litig.*, 653 F.2d 671, 679 (D.C. Cir. 1981) ("A district court has broad discretion in its resolution of discovery problems that arise in cases pending before it."). But as a practical matter, the court cannot reasonably require defendants to complete their production in less than a week, even though the court recognizes if plaintiff receives documents only days before her filing deadlines she may not have enough time to use them. The court therefore **ORDERS** defendants to produce all responsive documents as agreed and as ordered herein as soon as practicable, and in any event on or before **January 29, 2016**.

IV
ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff's motion to compel document production, as set forth in the Joint Stipulation for plaintiff's Motion to Compel Production of Documents (docket no. 42) is GRANTED IN PART AND DENIED IN PART as described above.